IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA,	:	
	:	
	:	
v.	:	CASE NO.: 1:17-CR-049 (LAG)
	:	
JUSTIN PATE,	:	
	:	
Defendant.	:	
	:	

ORDER

Before the Court is Defendant Justin Pate's Motion to Suppress Evidence (Doc. 28). Therein, Defendant seeks to suppress evidence and statements as fruits of a "poisonous search." (*Id.*) For the following reasons, Defendant's Motion (Doc. 28) is **DENIED**.

PROCEDURAL BACKGROUND

On November 16, 2017, Defendant Justin Pate was indicted on four counts of possession with intent to distribute methamphetamine, marijuana, heroin, and alprazolam. (Doc. 1.) On April 26, 2018, Defendant moved to suppress evidence and statements as fruits of a "poisonous search." (Doc. 28.) The Government timely responded on May 16, 2018. (Docs. 35, 38.) An evidentiary hearing was held on May 30, 2018. (Doc. 41.) Parties filed post-hearing briefs on July 9, 2018 and July 20, 2018. (Docs. 45, 46.) As such, the Motion is ripe for review. *See* M.D. Ga. L.R. 7.3.1(A).

FACTUAL FINDINGS

At the evidentiary hearing on Defendant's Motion to Suppress, [1] the Government offered the testimony of Deputy Danny Alday and one exhibit, which was admitted.[2] Defendant, though not presenting any witnesses, presented one exhibit containing footage

[1] The transcript from the May 30, 2018 evidentiary hearing on the Motion shall be referenced herein as (Doc. 44 at [page no.]:[line no.].).

[2] The Government introduced three separate video clips containing footage from Deputy Alday's bodycam, which shall be referenced herein as: (Gov.'s Ex. 1 vol. [video #] at [time stamp].).

from Deputy Alday's body camera (bodycam) on the evening in question.[3] Upon review of the witness's testimony, the exhibits, the Parties' arguments, and the record, the Court makes the following findings of fact.

Around 2:30 a.m. on April 12, 2017, Deputy Alday of the Lee County Sheriff's Office was on routine patrol near the Express Lane store at 1505 Philema Road S., Leesburg County, Georgia. (Doc. 44 at 3:16–24.) As he passed by the store, Deputy Alday observed a white 2005 Volkswagen Beetle parked at one of the gasoline pumps. (*Id.* at 3:25–4:2.) When Deputy Alday passed by the Express Lane store an hour later, the same car was still parked at the pump. (*Id.* at 4:3–13.) Deputy Alday pulled into the parking lot, talked to the clerk of the store about the car, and then made contact with the occupants of the vehicle. (*Id.* at 4:14–5:1.)

The occupants of the vehicle were Joseph Nichols (Mr. Nichols), Lauren Nichols (Mrs. Nichols), and Defendant Justin Pate. When Deputy Alday approached, Defendant and Mr. Nichols were standing outside the vehicle. (*Id.* at 5:5, 15:10–15.) Deputy Alday asked why Defendant, Mr. Nichols, and Mrs. Nichols were outside the store at that hour and whether they any had identification. (*Id.* at 16:25–17:1.) Defendant said he was waiting for a woman he previously had met at a club. (Def.'s Ex. 1 vol. 1 at 0:00–0:23, 4:22–4:55.) When questioned about why he was waiting so long—over an hour—Defendant joked that the woman probably was not coming. (*Id.* at 4:55–5:30.) Only Defendant was able to produce a license. (Doc. 44 at 17:2–9.) Mr. Nichols, who initially provided Deputy Alday with his middle name instead of his first name, and Mrs. Nichols only gave Deputy Alday their names. (*Id.*)

Deputy Alday asked the three occupants to wait while he checked the statuses of their licenses and whether they had outstanding warrants. (*Id.* at 18:2–8.) He told them that, once he got the information, they would be "good to go." (*Id.*) Deputy Alday kept Defendant's driver's license while they waited. (*Id.* at 17:13–16.) As they waited, Deputy Alday continued to question the occupants about their presence while looking around the vehicle. (Def.'s Ex. 1 vol. 1 at 0:00–0:24, 4:20–5:30.) At some point, Mrs. Nichols asked if she could use the restroom, but Deputy Alday told her to "hold on one minute" until the

[3] Defendant introduced two separate video clips, unedited, from Deputy Alday's bodycam footage,

dispatch information came back. (Doc. 44 at 17:17–18:1.) After he received the information from dispatch, but before the encounter ended, Deputy Alday told Mrs. Nichols she could go to the restroom. (Def.'s Ex. 1 vol. 1 at 26:54–27:05.)

The car was registered to Mr. Nichols's mother. (*Id.* at 5:9–24.) When Deputy Alday learned this, he walked Mr. Nichols a short distance away from the others and asked for his consent to search the vehicle. (Doc. 44 at 6:13–18, 10:18–20; Gov.'s Ex. 1 vol. 1 at 3:51:50–52:17; Def.'s Ex. 1 vol. 1 at 11:34–56.) The two remained within sight of Defendant and Mrs. Nichols, but it is not clear if they could hear the conversation. Mr. Nichols consented to the search. (*Id.*) Before searching the vehicle, Deputy Alday learned that Defendant's license was suspended and that Mr. Nichols had an outstanding arrest warrant for a probation violation. (Doc. 44 at 6:4–5; Gov.'s Ex. 1 vol. 2 at 3:58:00–58:18; Def.'s Ex. 1 vol. 1 at 17:28–18:20.) Deputy Alday placed Mr. Nichols under arrest pursuant to the warrant and, out of an abundance of caution, sought consent to search the vehicle from Mrs. Nichols. (Doc. 44 at 6:19–7:1; Def.'s Ex. 1 vol. 1 at 25:04–26:20.) Mrs. Nichols said that she did not own the car but consented to the search so long as it was okay with Mr. Nichols. (Doc. 44 at 6:19–7:1; Gov.'s Ex. 1 vol. 3 at 4:04:51–06:44; Def.'s Ex. 1 vol. 1 at 25:04–26:20.) When asked again for consent, Mr. Nichols did not object. (*Id.*) Defendant, who was approximately thirty feet away, did not object either. (Doc. 44 at 22:8–10.)

Afterwards, Deputy Alday asked and Defendant confirmed that he had been driving earlier that evening. (*Id.* at 23:22–24:2.) Deputy Alday next asked whether Defendant had any possessions in the vehicle, and Defendant stated that the pellet gun and some clothes in the car belonged to him. (*Id.* at 7:13–23, 24:20–26:1.) Deputy Alday searched the car and found a backpack underneath the driver's seat. (*Id.* at 8:8–21.) A search of the backpack revealed that it contained methamphetamine, marijuana, heroin, and alprazolam. (*Id.*) At no point before or during the search of the car or the backpack did Defendant object to the search of either. After Deputy Alday found the drugs, he placed Defendant under arrest. (Def.'s Ex. 1, vol. 2 at 8:09–10:35.) After being read his *Miranda* rights and waiving them, Defendant denied that the backpack was his. (*Id.*) Mr. Nichols, who was also Mirandized, and Mrs. Nichols said that the backpack belonged to Defendant and that they were unaware

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which shall be referenced herein as: (Def.'s Ex. 1 vol. [video #] at [time stamp].).

of its contents. (*Id.* at 11:08–12:30, 13:00–35.)

DISCUSSION

Defendant contends that Deputy Alday did not have reasonable suspicion for the investigatory stop, and that, therefore, Mr. Nichols and Mrs. Nichols's consent to search the vehicle was ineffective. Thus, Defendant argues that the contents of the backpack and his statements are "fruit of a poisonous search." (Doc. 28 at 1, 7.) Conversely, the Government argues that the search of the vehicle and the backpack were done pursuant to the valid consent of Mr. Nichols. (Doc. 38 at 5.) "As a general rule, the evidence gathered as a result of an unconstitutional stop must be suppressed." *United States v. Chanthasouxat*, 342 F.3d 1271, 1280 (11th Cir. 2003). "However, a defendant's consent to a search may cure the constitutional taint on evidence obtained by violating a defendant's Fourth Amendment rights." *Id.*

I. Defendant's Standing

As an initial matter, the Government contends that Defendant does not have standing to challenge the search of the vehicle and its contents. (Doc. 38 at 3.) "[I]n order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable." *United States v. Barber*, 777 F.3d 1303, 1305 (11th Cir. 2015) (quoting *Minnesota v. Carter*, 525 U.S. 83, 88 (1998)). "When considering whether an individual has a legitimate expectation of privacy, a court must consider: (1) whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy; and (2) whether the individual's subjective expectation of privacy is one that society is prepared to recognize as reasonable." *United States v. Carlisle*, 614 F.3d 750, 756–57 (7th Cir. 2010) (citing *Smith v. Maryland*, 442 U.S. 735 (1979)). "The defendant need not own the property, . . . but his expectation of privacy must be 'reasonable,' which means that it 'has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.'" *United States v. Gibson*, 708 F.3d 1256, 1276 (11th Cir. 2013) (quoting *Carter*, 525 U.S. at 88). "Whether an individual possesses a constitutionally protected privacy interest depends upon the totality of circumstances." *United States v. McKennon*, 814 F.2d 1539, 1543 (11th Cir. 1987).

Defendant has standing because an unauthorized driver of a vehicle has a legitimate expectation of privacy, with regard to the vehicle, if he or she is given permission to operate it by an authorized driver. *See Byrd v. United States*, 138 S. Ct. 1518, 1531 (2018); *see also United States v. Miller*, 821 F.2d 546, 548 (11th Cir. 1987). This is true even if the owner of the vehicle is not aware that the third party will be driving the vehicle. *See Byrd*, 138 S. Ct. at 1531 (holding that the fact that driver was not listed in rental agreement did not destroy his legitimate expectation of privacy in car). Mr. Nichols's mother gave Mr. Nichols permission to drive, and he in turn permitted Defendant to drive the car. (Doc. 44 at 7:13–23, 23:22–26:1.) Thus, Defendant had a legitimate expectation of privacy in the vehicle and, therefore, has standing to object to the search.

"Legitimate expectations of privacy[,] [however,] can be abandoned." *McKennon*, 814 F.2d at 1545. The Government contends that the Defendant abandoned his expectation of privacy in the backpack when he stated, after the search, that it did not belong to him. (Doc. 46 at 4.) When a defendant "affirmatively disavows any such expectation" or "relinquishes possession and disclaims ownership of an article of luggage, any expectations of privacy become illegitimate," and the defendant is precluded from challenging the legality of the search. *United States v. McBean*, 861 F.2d 1570, 1574 (11th Cir. 1988); *United States v. Hawkins*, 681 F.2d 1343, 1345 (11th Cir. 1982). While "repeated disclaimers of ownership prior to a search generally preclude assertions of privacy interests," *McKennon*, 814 F.2d at 1546 (citing *Hawkins*, 681 F.2d at 1345), the same is not true for post-search denials. *Hawkins*, 681 F.2d at 1346 (explaining that not all disclaimers of ownership "foreclose [ ] the establishment of a reasonable expectation of privacy.").

Defendant did not abandon his legitimate expectation of privacy in the backpack. While it could be argued that Defendant made a passive failure to claim ownership when he indicated that only the pellet gun and some clothes in the car belonged to him, Defendant never affirmatively disavowed ownership of the backpack before the search. *See Hawkins*, 681 F.2d at 1346 (distinguishing "an affirmative disavowal of ownership" and "a passive failure to claim incriminating evidence."). In *McKennon*, the Eleventh Circuit rejected the district court's finding that a disclaimer of ownership, which occurred after the search, precluded a finding that the defendant had abandoned his reasonable expectation of privacy

in the object of the search. *McKennon*, 814 F.2d at 1546. Thus, as Defendant had a legitimate expectation of privacy, he may challenge the search of the vehicle and backpack.

II. Consent to Search

"A search of property, without [a] warrant or probable cause, is proper under the Fourth Amendment when preceded by valid consent." *United States v. Dunkley*, 911 F.2d 522, 525 (11th Cir. 1990) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973)). The Government has the burden to prove valid consent to search. *United States v. Massell*, 823 F.2d 1503, 1507 (11th Cir. 1987). "The consent must be voluntary [ ] and the person giving the consent must have authority to do so, . . . or must reasonably appear to have the authority to do so." *Id.* (internal quotation and punctuation omitted) (citing *Illinois v. Rodriguez*, 497 U.S. 177 (1990)). Defendant does not dispute that Mr. Nichols had authority to consent to the search of the vehicle. He instead argues that Mr. Nichols's consent was not voluntary. (Doc. 28 at 8.) Courts must consider the totality of the circumstances to determine whether consent was voluntary, including:

> [T]he person's youth, his lack of education, evidence of the person's low intelligence, the existence of advice as to the nature of the constitutional right implicated, the length of detention preceding the request to consent, the nature of prior questioning, the environment, and whether any physical punishment was involved.

United States v. Zapata, 180 F.3d 1237, 1241 (11th Cir. 1999). In essence, "to be considered voluntary, a consent to search 'must be the product of an essentially free and unconstrained choice.'" *Id.* (quoting *United States v. Garcia*, 890 F.2d 355, 360 (11th Cir. 1989)).

Mr. Nichols voluntarily consented to a search of his vehicle. (Doc. 44 at 6:13–18; 10:18–20; Gov.'s Ex. 1 vol. 1 3:51:50–52:17.) The evidence shows that Mr. Nichols had been detained for about eleven minutes when he agreed to let Deputy Alday search the vehicle. (Gov.'s Ex. 1 vol. 1 3:51:50–52:17.) There is no evidence that Deputy Alday coerced or otherwise forced Mr. Nichols to consent to the search. (*Id.*) In fact, the video of the encounter belies any argument that Mr. Nichols was coerced to give consent. Nor was the environment oppressive. At the time that Mr. Nichols initially gave consent, Deputy Alday was the only officer present. Furthermore, Mr. Nichols is an adult, and there is no evidence that he lacked the education or intelligence necessary for voluntary consent. The

encounter was of a limited duration at the time of consent, and the prior questioning and environment were not of a coercive nature. The consent was unequivocal, as Deputy Alday confirmed that Mr. Nichols was giving affirmative consent to search the car. Accordingly, Mr. Nichols's initial consent to the search of the car was voluntary.

Notwithstanding Mr. Nichols's consent, Defendant argues that his consent was required for the search. (Doc. 28 at 9.) This argument fails because Defendant was present and failed to actually express a refusal to consent to the search. "[A] third party who has 'common authority over or other sufficient relationship to the premises or effects sought to be inspected' may give valid consent to search an area." *United States v. Harris*, 526 F.3d 1334, 1339 (11th Cir. 2008) (quoting *United States v. Matlock*, 415 U.S. 164, 171 (1974)); *see also Dunkley*, 911 F.2d at 522 (extending third party consent rule to consensual vehicle searches). But, "the extension of the prohibition on warrantless searches applies only to defendants who are present *and actually express a refusal to consent*." *Harris*, 526 F.3d at 1339 (emphasis added).

While Defendant was not specifically asked for his consent, he was present and did not object to the search. (Doc. 44 at 7:13–23, 24:20–26:10; Gov.'s Ex. 1 vol. 1 at 3:51:50–52:17, vol. 3 at 4:04:51–06:44; Def.'s Ex. 1 vol. 1 at 11:34–56, 25:04–26:20.) Because Defendant did not object, Deputy Alday had valid consent to search the car and its contents. *See United States v. Watkins*, 760 F.3d 1271, 1283 (11th Cir. 2014) (noting that the objecting co-occupant exception is a "narrow exception with specific requirements.").

Nor was the search overbroad. "When an individual provides a general consent to search, without expressly limiting the terms of his consent, the search 'is constrained by the bounds of reasonableness: what a police officer could reasonably interpret the consent to encompass.'" *Zapata*, 180 F.3d at 1242 (quoting *United States v. Strickland*, 902 F.2d 937, 941 (11th Cir. 1990)). Accordingly, "[a] general consent to search for specific items includes consent to search any compartment or container that might reasonably contain those items." *Id.* at 1243.

In *United States v. Barber*, the Eleventh Circuit held that a driver of an automobile had apparent authority to consent to the search of a passenger's bag. 777 F.3d at 1305–06. In *Barber*, the driver—not the owner of the vehicle—gave general consent to search the

vehicle. *Id.* at 1304. In upholding the search, the court explained that it was reasonable to believe that the driver, who had apparent authority, may have common ownership over the bag, making it within the purview of the consent. *Id.* at 1306. Here, Mr. Nichols agreed to a general consent search of the car. (Doc. 44 at 6:13–18, 10:18–20; Gov.'s Ex. 1 vol. 1 at 3:51:50–52:17; Def.'s Ex. 1 vol. 1 at 11:34–56.) Deputy Alday stated he was looking for illegal drugs and weapons, and thus it was within the bounds of reasonableness for the search to include the entire inside of the car, including under the seats, as well as bags and containers found therein. *See Zapata*, 180 F.3d at 1242–43 (search behind interior door panel for drugs, guns, weapons, and large sums money held reasonable). Absent an objection from Defendant, Deputy Alday's search of the car and backpack were proper in light of Mr. Nichols' consent. Accordingly, Defendant's Motion to Suppress is **DENIED** to the extent the evidence was seized during the search of the car or Defendant's backpack.

III. Statements by Defendant

Defendant further seeks to suppress his "subsequent custodial statements that resulted from the search." (Doc. 28 at 9.) This request is based on the premise that the statements were the result of an unlawful search and therefore fruit of the poisoned tree. As the Court has found that the search was valid and that suppression is not warranted as to the search, suppression also is not warranted regarding Defendant's custodial statements. To the extent Defendant argued in his initial brief that, because of Deputy Alday continued to maintain control over his license and told him to "sit tight" while he searched the car, his subsequent custodial statements must be suppressed as fruits of an unlawful seizure, Defendant appears to have abandoned this argument after the suppression hearing as it is not discussed in his post-suppression hearing brief. (*See* Doc. 28 at 8–9; *see generally* Doc. 45.)

CONCLUSION

For the foregoing reasons, Defendant's Motion to Suppress Evidence (Doc. 28) is **DENIED**.

SO ORDERED, this 30th day of January, 2019.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT